IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.332 of 1997
Date of Order : 28/11/2007

Kehar Singh Versus Ashok Kumar

Coram: HON'BLE MR. JUSTICE HEMANT GUPTA

Present: Shri Naresh Prabhakar, Advocate for the petitioner.
Shri L.M. Suri, Senior Advocate with
Shri Neeraj Khanna, Advocate for the respondent.

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J U D G M E N T

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order passed by the learned Executing Court dated 20.9.1996, whereby objections filed by the petitioner-judgment debtor, to the execution of the decree dated 9.8.1990, were dismissed.

The plaintiff-respondent filed Civil Suit No.345 of 29.8.1988 for specific performance of the agreement of sale of the land measuring 35 kanals 14 marlas. It was the case of the plaintiff that the defendant-petitioner has received Rs.30,000/- as earnest money.

On 9.8.1990, the parties entered into a settlement whereby the defendant agreed to pay a sum of Rs.25,000/- to the plaintiff on or before 31.10.1990 and the remaining amount of Rs.58,325/- on or before 31.10.1991, total Rs.83,325/-. In terms of the decree, if the defendant fails to make the payment, the suit for specific performance of the agreement was to be granted. The relevant extract of the decree reads as under:-

> "This suit coming on this day for final disposal before me in the presence of Shri A.B.Bhandari, Advocate, counsel for the plaintiff and Shri J.S.Mouji, Advocate, counsel for the defendant, it is

> hereby ordered that the defendant has made the statement that he has no objection if the suit of the plaintiff for specific performance of the agreement is decreed subject to the condition that he will pay Rs.25000/- to the plaintiff upto 31st October, 1990 and remaining amount of Rs.58,325/- in two installments upto 31st October, 1991, total Rs.83,325/- and in that case the plaintiff shall not be entitled to execute a decree against him and in case he fails to pay the aforesaid amount as per the agreement, within stipulated time, the plaintiff shall be entitled to get the decree executed against him. In view of the aforesaid statement of the defendant, the suit of the plaintiff is decreed accordingly. Parties have been left to bear their own costs."

The petitioner paid a sum of Rs.25,000/- before 31.10.1990, but the remaining amount was not accepted by the decree holder when offered. Thus, the petitioner filed the objection petition before the learned Execution Court to the effect that the decree cannot be executed and the same be dismissed.

The learned Executing Court found that in terms of the decree, a sum of Rs.58,325/- was to be paid by the judgment debtor upto 31.10.1991 in two installments. But having not paid the same, the plaintiff is entitled to execute the decree for specific performance.

Learned counsel for the petitioner has vehemently argued that the plaintiff has paid a sum of Rs.25,000/- before 31.10.1990. The plaintiff denied the receipt of the said amount, but admitted the same during the course of arguments. It is also pointed out that the decree holder refused to accept the balance amount and, therefore, the plaintiff is not entitled to seek

execution of the decree as the petitioner was always ready and willing to deposit the balance amount of Rs.58,325/- . In any case, the Court has a power to extend the time for deposit of the said amount in terms of Section 148 of the Code of Civil Procedure. Learned counsel for the petitioner has also pointed out that during the pendency of the proceedings before the learned Lok Adalat, the payment of Rs.58,330/- was tendered to the decree holder on 19.11.2001. However, the said amount was not accepted by the decree holder on 2.5.2002 and the same was returned to the counsel for the petitioner on 3.5.2002.

The suit of the plaintiff for specific performance was decreed as for payment of the amount. The amount agreed to be paid was Rs.83,325/-. Out of the said amount, Rs.25,000/- stands paid before 31.10.1990. The dispute is the payment of remaining amount of Rs.58,325/-. As per the petitioner, he has offered to pay the said amount to the respondent, but the same was not accepted. The fact remains that the said amount was not deposited. Having not done so, the question which arises is whether the petitioner has made out a case for extension of time for deposit of the balance amount of Rs.58,325/-.

It is the case of the petitioner that the respondent is running a shop of the Commission Agent and the petitioner used to bring his produce to the shop of the respondent. Thus, for the amount payable to the plaintiff, the plaintiff filed a suit for specific performance on the basis of an agreement of sale which was never intended as an agreement of sale. Such intention of the parties is reflected in the decree dated 9.8.1990 when the plaintiff agreed to accept the amount of Rs.83,325/- in full and final settlement of his claims. If the decree is examined in such a background, the

irresistible conclusion is that the decree is for recovery of money and the decree for specific performance of the agreement is only by way of penalty. The rigor of such penalty clause can be relieved by extending the time stipulated in the consent decree for deposit of the amount of Rs.58,325/- alongwith interest so as to compensate the delay in making the payment.

The jurisdiction of the Court to extend the time under Section 148 of the Code of Civil Procedure, even when the time is fixed in a consent decree, has been examined by the Hon'ble Supreme Court in ***"Smt.Periyakkal and others Versus Smt.Dakshyani, AIR 1983-Supreme Court-428".*** In the aforesaid case, though it has been held that time would not be extended ordinarily, nor for the mere asking, but it can be granted in rare cases to prevent manifest injustice. The Court would not rewrite a contract between the parties, but the Court would relieve against a forfeiture clause and where the contract of the parties has merged in the order of the Court, the Court's freedom to act to further the ends of justice would surely not stand curtailed.

Though the said judgment was not referred to by this Court in later judgment in ***"Mehru Versus Mohan Lal and others, AIR 1985 Punjab & Haryana-143",*** the view taken in the said judgment is in tune of the aforesaid judgment of the Supreme Court. It was held to the following effect:-

> "In Jadabendra Nath Mishra's case (supra), a compromise was entered into between the parties which provided that if certain amount was paid within certain time, ex-parte decree was to be set aside and the suit restored to the file, but if payment was not made within the time specified, ex-parte decree would stand confirmed. The said

> clause was held a penal clause and the judgment debtor was relieved of its rigorous by extending the time of deposit of the amount settled under S.148 read with S.141 of the C.P.C. On similar considerations, the judgment-debtor was relieved of the penal clause by the Bombay High Court in Marketing and Advertising Associates Pvt. Ltd. V. Telerad Private Limited, AIR 1969 Bom.323. Although a discordant not has been struck in the decisions of some other High Courts but the view expressed in Jadabendra Nath Mishra and Marketing and Advertising Associate's cases (supra) being more in consonance with the justice and equity. I prefer to follow the same and hold that the court is empowered to relieve the judgment debtor of the rigours of penal clause which provides the forfeiture of property and other valuable rights in case of default of payment according to the time stipulated in the consent decree."

Similar is the view taken by this Court in cases ***"Mohmad Yussin and another Versus Faiz Mohd., 2006 (3) P.L.R.569"*** and ***"Vijay Kumar Versus Anand Parkash Goel and another, 2007 (1) PLR-61".***

In view of the fact that the transaction between the parties was a transaction of loan and the intention of the parties is to grant a decree for recovery of the amount, therefore, I deem it appropriate to extend the period for deposit of the balance amount of Rs.58,323/- alongwith interest @ 10% per annum from 1.11.1991 till its realization. If the petitioner deposits the entire balance amount alongwith such interest on or before 31.1.2008, the decree shall stands complied with. But, if the petitioner fails to deposit the

aforesaid amount, then it shall be open to the respondent to execute the decree for specific performance of the agreement dated 9.8.1990.

The present revision petition stands disposed of accordingly.

(HEMANT GUPTA)
28/11/2007 JUDGE
* mohinder